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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appn. Number 09/872,914
Appn. Filed 06/01/2001
Applicant Ferdinand Schermel
Title Tiltable Modular Recycle Container System
Examiner Stephen J. Costellano
Art Unit 3727

AMENDMENT G

Feb 18, 2006

Assistant Commissioner for Patents
Washington, D.C. 20231

total no. of pages of text 27
total no. of pages of drawing 4

Sir:

In response to Appeal 2005-2495 date mailed Dec 20/06

The applicant is filing an RCE to the claims and specification to be considered with respect to the appeal.

Summary of Appeal

The results of the appeal is that all rejections were not sustained except for the 35 U.S.C. 112 support for the 55 inch base perimeter of the wheeled container, and also the 35 U.S.C. 103(a) for the same 55 inch base perimeter. Scaling was considered inappropriate in the 112 rejection and there was a lack of written descriptive support. For the 103 rejection, which stated that "No criticality has been assigned to the 55 inch perimeter dimension" the appeal board stated that "This reasoning is flawed from the outset, however, because the Tiramani system does not involve trash containers. Moreover, it is of no moment that the limitations in question may not be critical. Claims are not legally required to include critical limitations." This limitation was originally added to obviate over the prior art, but is not deemed necessary by the board. The applicant proposes to remove limitation of criticality for the 55 inch base perimeter as well as requests the examiner to reconsider the drawing and claim objections with respect to the ruling by the board of new matter not being added, to place the application in condition for allowance.